

PATENT
Application Serial No. 10/653,227
Attorney Docket No. H1486

REMARKS

In the Office Action, the Examiner rejected claims 1-3, 6-12, 15, 16, 18, and 19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,800,885 to An et al.; rejected claims 1-3, 6, 7, 16, 18, and 19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,657,252 to Fried et al.; rejected claims 4 and 13 under 35 U.S.C. § 103(a) based on An et al. in view of U.S. Patent No. 6,787,476 to Dakshina-Murthy et al.; and rejected claims 5, 14, and 17 under 35 U.S.C. § 103(a) as being unpatentable over An et al. in view of U.S. Patent No. 5,663,586 to Lin.

By this Amendment, Applicants have amended claims 1, 8, and 16. Claims 5, 14, and 17 are canceled without prejudice or disclaimer. The amendments to claims 1, 8, and 16 generally incorporate the features of canceled claims 5, 14, and 17, respectively.

Applicants submit that the rejection of claims 1-3, 6-12, 15, 16, 18, and 19 under 35 U.S.C. § 102(e) based on An et al. is respectively traversed. Although Applicants do not necessarily agree with the Examiner's interpretation of An et al. with respect to these claims, Applicants submit that An et al. does not disclose each feature of these claims, as amended. For example, independent claims 1, 8, and 16, as amended, recite that the first and second sidewall spacers are formed to a width ranging from about 150 Å to about 1000 Å. The Examiner concedes that this feature is not disclosed by An et al. (Office Action, page 9). Accordingly, the rejection of these claims based on An et al. should be withdrawn.

Applicants submit that the rejection of claims 1-3, 6, 7, 16, 18, and 19 under 35 U.S.C. § 102(e) based on Fried et al. is respectively traversed. Although Applicants do not necessarily agree with the Examiner's interpretation of Fried et al. with respect to these claims, Applicants

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submit that Fried et al. does not disclose each feature of these claims, as amended. For example, Applicants submit that Fried et al. does not disclose or suggest that the first and second sidewall spacers are formed to a width ranging from about 150 Å to about 1000 Å, as recited in these claims. Accordingly, the rejection of these claims based on Fried et al. should be withdrawn.

In rejecting canceled claims 5, 14, and 17 under 35 U.S.C. § 103(a), the Examiner relies on Lin in addition to An et al. Applicants submit that a rejection based on An et al. and Lin is not a proper rejection under 35 U.S.C. § 103(a), as An et al. does not qualify as prior art under 35 U.S.C. § 103(a). 35 U.S.C. § 103(c) qualifies 35 U.S.C. § 103(a) and states:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(35 U.S.C. § 103(c)). An et al. qualifies as prior art under 35 U.S.C. § 102 only under subsection (e), and An et al. and the pending application are both assigned to Advanced Micro Devices, Inc. Accordingly, An et al. is not available to preclude patentability under 35 U.S.C. § 103(a). For at least these reasons, the rejection of claims 5, 14, and 17 should not be applied to amended claimed 1, 8, and 16.

Claims 4 and 13 stand rejected under 35 U.S.C. § 103(a) based on An et al. and Dakshina-Murthy et al. For reasons similar to those given above, Applicants submit that this rejection is improper as An et al. is not available as a potential prior art reference under 35 U.S.C. § 103(a). Accordingly, the rejection of these claims should also be withdrawn.

In view of the foregoing amendments and remarks, Applicants submit that the claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited

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against this application. Applicants therefore request the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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